IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2845 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANCHALBEN PRANLAL SHAH

Versus

CHAIRMAN - BHUJ AREA DEVELOPMENT AUTHORITY

Appearance:

1. Special Civil Application No. 2845 of 2004

MR NALIN K THAKKER for Petitioner No. 1

MR PRASHANT G DESAI for Respondent No. 1

MR S.N. SHELAT, A.G. with MS MAITHILI MEHTA, A.G.P for Respondents Nos. 2-3

RULE SERVED BY DS for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 11/08/2004

ORAL JUDGEMENT

1. The petitioner has been aggrieved by the making of Town Planning Scheme No. 4 of Bhuj in pursuance of the provisions of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as "the Act") and has, therefore, approached this Court.

2. Heard learned advocate Shri Nalin Thakker appearing for the petitioner, learned advocate Shri P.G. Desai appearing for respondent no.1, and learned Advocate General S.N. Shelat with learned A.G.P. Ms Maithili Mehta appearing for respondents nos. 2 and 3. Though served, nobody has appeared for respondent no.4.

3. Learned advocate Shri Nalin Thakker appearing for the petitioner has submitted that formerly the petitioner was an owner of land bearing Survey No. 3887 admeasuring 378.56 sq meters of land situated at Bhuj. Out of the said plot, the petitioner had sold 156.56 sq meters of land to respondent no.4 and 222 sq meters of land was retained by her. As a result of the said transaction, the land bearing Survey No. 3887 had been shown as 3887-A and 3887-B in the revenue record. So far as Survey No. 3887-A is concerned, it belonged to respondent no. 4, whereas Survey No. 3887-B admeasuring 222 sq meters belonged to the petitioner. In pursuance of the scheme, the petitioner's land was shown as original plot No. 1300 whereas land belonging to respondent no. 4 was shown as original plot no. 1299 in the draft town planning scheme. Ultimately, the draft town planning scheme had been sanctioned and even the preliminary scheme had been sanctioned by the Government and as a result thereof, Final Plot No. 834 has been allotted to the petitioner as well as respondent no. 4 jointly. The said Final Plot admeasures 285 sq meters.

4. The learned advocate for the petitioner has submitted that several errors have been committed by the respondent authorities in making the scheme. According to him, no notice was ever given to the petitioner but the notice, which had been addressed to her had been posted at the address of respondent no. 4 and, therefore, the petitioner never received any notice from the respondent authorities. It has been thereafter submitted that only one Final Plot has been given to the petitioner and respondent no.4 jointly, and respective portion owned by the petitioner and respondent no. 4 have not been demarcated by the respondent authorities. Because of the said fact, it would be difficult for the petitioner as well as respondent no. 4 to have appropriation of the amount of compensation to be

received from the concerned authorities. Moreover, according to the petitioner, there is more deduction of land from the original plot belonging to the petitioner and thus, discriminatory treatment has been given to the petitioner.

5. It has been further submitted by him that looking to the situation of the Final Plot allotted to the petitioner, it would be extremely difficult for the petitioner to have an access to the main road and because of reservation of Final Plots nos. 1380 and 1381 for "sale for commercial", the petitioner would not have any access to the main road and the petitioner shall also be deprived of light and air. According to him, no plot should have been reserved for "sale for commercial" at the entrance of the petitioner's building in a manner which would not only obstruct air and light but would also obstruct the entrance of the building belonging to the petitioner.

6. The petitioner has therefore submitted that Final Plot No. 1380 and 1381 should not have been reserved for "sale for commercial". It has been also prayed that the respondent authorities should be directed to allot separate Final Plots to the petitioner as well as to respondent no.4. It has been also prayed that the petitioner be directed to grant some more land as relatively more land has been deducted form the original plot belonging to the petitioner.

7. The learned advocates appearing for the respondents have fairly submitted that there appears to be some substance in the grievance made by the petitioner. It has been however submitted by them that as the town planning scheme has been sanctioned by the State of Guajrat under the provisions of Section 65 of the Act and as the scheme has become part of the Act, it is not possible at this stage to do anything for redressal of the grievance of the petitioner. It has been further submitted by the learned advocates that some of the grievances of the petitioner can be redressed if the scheme is varied as per the provisions of Section 70 of the Act. It has been submitted by the learned advocates that in pursuance of the contents of the petition, respondent no. 1 would like to apply to respondent no. 3 so that respondent no. 3 can do the needful for variation of the scheme.

8. In the circumstances, it is directed that the contents of the petition and the contents of the rejoinder filed by the petitioner dated 10th August, 2004

shall be considered as a representation or as a request made for variation of the scheme by respondent no.1, and alongwith its remarks, respondent no.1 shall apply to respondent no. 3 for variation of the scheme as soon as possible. Upon receipt of the application alongwith the remarks of respondent no.1, respondent no. 3 shall take appropriate action for variation of the scheme.

9. The petitioner shall furnish a copy of the petition alongwith the rejoinder referred to hereinabove to the Registry of this Court so that alongwith a copy of this order, a copy of the petition as well as the rejoinder can be forwarded to respondents nos. 1 and 3.

10. Till the final decision is taken by respondent no.3, Final Plot Nos. 1380 and 1381, which have been reserved for "sale for commercial" shall not be disposed of and shall be kept open so that the petitioner can also use the same for having access to his building.

11. In view of the above direction, the petition is disposed of as allowed. Rule is made absolute to the above extent with no order as to costs.

Direct service is permitted.

(A.R. DAVE, J.)

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